

REMARKS

The Examiner rejected claims 17, 18, 24, 25, 56, 58-62, 64-68, and 70-75 under 35 U.S.C. §103(a) as unpatentable over IEEE Std 802.16-2001 (IEEE) in view of U.S. Patent No. 6,272,117 to Choi et al. (Choi), background of the instant application (Background), and U.S. Patent No. 6,317,234 to Quayle et al. (Quayle).

By this amendment, Applicants amend claims 17, 24, 56, 61, 64, and 66 to more clearly define the features of those claims and cancel claims 74 and 75 without prejudice or disclaimer.

Claims 17, 18, 24, 25, 56, 58-62, 64-68, and 70-73 are currently pending.

The Examiner rejected claims 17, 18, 24, 25, 56, 58-62, 64-68, and 70-73 under 35 U.S.C. §103(a) as unpatentable over IEEE in view of Choi, Background, and Quayle. Applicants respectfully traverse this rejection.

Amended claim 17 recites, inter alia, the following features: “monitoring means for monitoring capacity request messages received from the at least one subscriber station, capacity grant messages sent by a base station, and data transmissions received from the at least one subscriber station, wherein at least one of the capacity request messages comprises information based on a previous capacity request sent by the at least one subscriber station; and avoiding means for avoiding a mismatch between a granted capacity and data received from the subscriber station due to a collision preventing receipt at the base station of the initial transmission of the previous capacity request.”

The Examiner acknowledges on page 3 of the Office Action that IEEE fails to disclose or suggest the above-noted features of claim 17. To cure this deficiency of IEEE, the Examiner relies on Choi. Office Action at page 3. But a careful scrutiny of Choi reveals that Choi does not disclose what the Examiner alleges.

Instead, Choi describes a base station receiving a request from a mobile wireless data terminal for access to a communication channel, and in response to the request, granting access to the communication channel. Rather than disclose including previous capacity request information in a capacity request and monitoring that information to enable a determination of a mismatch, Choi at best discloses piggy-backing in an acknowledgement message, an indication of whether a channel is available. It would be a clear error to allege that providing an indication of channel availability constitutes the “avoiding means” recited in claim 17. Indeed, Choi states:

The method includes the steps of: (a) providing a communication channel having first and second sets of time slots; (b) providing a base station serving a service area and having a transceiver for communicating by radio in the communication channel; (c) sending a message from the base station in a first set of time slots indicating whether the communication channel is available; (d) allowing one or more mobile data terminals to transmit a request for access to the communication channel upon receiving the message from the base station; and (e) receiving at the base station the request for access to the communication channel in the second set of time slots, and (f) granting the request for access to the communication channel to the requesting mobile wireless data terminal.

In one implementation of the method, the message indicating communication channel availability is provided in a field within a header of a control packet. The indication of channel availability can be piggy-backed onto an acknowledgment message sent by the base station in response to a previous message received from the mobile wireless data terminal.

Choi at col. 3, lines 31-56.

Because an acknowledgement message indicating the availability of a channel provides no clue as to a mismatch, much less not receiving a previous capacity request due to a collision, Choi fails to disclose or suggest at least the following feature of claim 17: “avoiding means for avoiding a mismatch between a granted capacity and data received from the subscriber station due to a collision preventing receipt at the base station of the initial transmission of the previous capacity request.” It also follows that Choi fails to disclose or suggest “monitoring means for monitoring capacity request messages received from the at least one subscriber station, capacity grant messages sent by a base station, and data transmissions received from the at least one

subscriber station, wherein at least one of the capacity request messages comprises information based on a previous capacity request by the at least one subscriber station."

Furthermore, the Examiner acknowledges on page 4 of the Office Action that both IEEE and Choi fail to disclose "wherein the capacity request messages comprise information based on previous capacity requests sent by the at least one subscriber station," as recited in claim 17. To cure this deficiency of IEEE and Choi, the Examiner relies on Quayle.

Quayle describes user equipment sending data to a head-end station via a buffer. The user equipment sends a request for capacity based on whether the buffer is full or not. The fullness of the buffer depends on the rate at which data arrives at and leaves the buffer. The buffer, at any instant, may comprise data that it received in previous requests. Rather than provide any information regarding previous capacity requests of a subscriber, Quayle merely provides information on a buffer and the rate at which the buffer is emptied. In short, Quayle's request for capacity is sent when the rate at which data in a buffer leaves the buffer faster than the rate at which data arrives at the buffer. Inserting Quayle thus offers no clue as to a mismatch, much less not receiving a previous capacity request due to a collision. Indeed, the Examiner's modification either renders the combination inoperative or requires fundamental changes in contravention of M.P.E.P 2143.03 and Board of Patent Appeals and Interferences.¹ While Background discloses QoS, Background does not cure the aforementioned deficiencies of IEEE, Choi, and Quayle.

¹ See M.P.E.P 2143.03("[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959))." See also *Ex Parte Tofitness*, 2008 WL 4451384 (Bd. Pat. App. & Int 2008) (reversing the Examiner's section 103 rejection as the proposed combination would yield an inoperative device).

In view of the foregoing, claim 17 is allowable over IEEE, Choi, Background and Quayle, whether these references are taken individually or in combination, and the rejection of claim 17 under 35 U.S.C. §103(a) should be withdrawn.

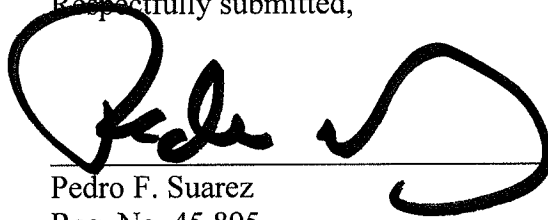
Independent claims 24, 25, 56, 61, 64, and 66 include similar features as noted above with respect to claim 17. For at least the reasons noted above with respect to claim 17, independent claims 20, 24, 25, 56, 61, 64, and 66 as well as claims 18, 58-60, 62, 65, 67, 68, and 70-73 at least by reason of their dependency, are allowable over IEEE, Choi, and Background, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

CONCLUSION

On the basis of the foregoing amendments, the pending claims are in condition for allowance. It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

Applicant is concurrently filing herewith a Petition for a one-month extension of time with the requisite fee. No additional fees are believed to be due, however the Commissioner is hereby authorized to charge any additional claim fees and any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. 39700-768001US/NC39727US. If there are any questions regarding this reply, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Pedro', followed by a large, stylized flourish that loops around and ends with a horizontal line.

Pedro F. Suarez
Reg. No. 45,895

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